

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TOMAS RUIZ and ROJELIO MARTINEZ
on behalf of themselves and on behalf of all
others similarly situated,

Plaintiffs,

V.

**GVMS, INC., GVHC, INC.
GV MARINE SERVICES and
GEORGE SACARIAS VASQUEZ,
Individually,**

Defendants.

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CIVIL ACTION NO. 4:08-cv-1692

**JOINT MOTION FOR
APPROVAL OF SETTLEMENT AGREEMENT**

Plaintiffs, Tomas Ruiz and Rojelio Martinez, on behalf of themselves and on behalf of all others similarly situated, and Defendants, GVMS, Inc., GVHC, Inc., GV Marine Services, and George Sacarias Vasquez, Individually, (“GVMS”) file this joint motion for approval of their settlement agreement. In support, the parties show as follows:

I. INTRODUCTION

1. This is an action brought under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 *et seq.*

II.

FACTS

2. The parties settled this matter after the court ordered them to appear before the magistrate judge. Part of the settlement required notice to be sent out to additional workers to give them the opportunity to join the settlement. Five additional workers filed their consent forms. Some of the

filed their consent forms after the deadline; however, Defendant has agreed to treat those consent forms as if they had been filed timely. The parties have exchanged payroll records to perform the final calculations. The parties now request that the court approve the settlement, as dictated into the court's record.

III.
ARGUMENT & AUTHORITIES

3. To be binding, private settlements containing waivers of FLSA claims must be approved by the Department of Labor or a court. *Jarrard v. Southeastern Shipbldg. Corp.*, 163 F. 2d 960, 961 (5th Cir. 1947); *Lynn's Food Stores v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982). For this reason, the parties seek the Court's approval of the terms of this settlement.

4. The parties now ask the court to approve the settlement. The settlement contemplates a set of payments to the named Plaintiffs and other opt-in Plaintiffs in exchange for release of all claims of any kind regarding this case.

5. The following is a summary of the key settlement terms:

- Settling Defendants agree to pay a sum certain to resolve all claims asserted, or which could have been asserted in the original or amended complaint, to resolve all of the eight (8) Plaintiffs' claims in the amended original complaint; and
- Settling Defendants agree to pay a sum certain to resolve all claims asserted, or which could have been asserted in the original or amended complaint, to resolve all of the claims of the four (5) Plaintiffs who opted into this lawsuit after the mediated settlement conference in accordance with a formula agreed to between the parties.

6. In consideration for payment by Settling Defendants, Settling Plaintiffs completely release, acquit and forever discharge Settling Defendants of all FLSA claims for unpaid overtime pay, Workers Compensation premiums, and administrative claims that could have been brought in this suit.

7. The total sum represents the result of good faith negotiations over the number of hours the Plaintiffs and Opt-In Plaintiffs worked and whether such workers were exempt from the FLSA as independent contractors.

IV.
CONCLUSION

8. In conclusion, the parties seek the Court's approval of the terms of this settlement as required by *Jarrard v. Southeastern Shipbldg. Corp.*, 163 F. 2d 960, 961 (5th Cir. 1947); *Lynn's Food Stores v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982) and submit this motion accordingly.

V.
PRAYER

WHEREFORE, Plaintiffs and Defendants ask the court to approve the settlement by signing the attached, proposed order.

RESPECTFULLY SUBMITTED BY:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served on all opposing parties by and through their attorney(s) of record via the Southern District's CM/ECF system on this 24 day of September 2009.

/s/
Galvin B. Kennedy